

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 02-376
FM Table of Allotments,)	RM-10617
FM Broadcast Stations.)	RM-10690
)	
Sells, Willcox, and Davis-Monthan)	
Air Force Base, Arizona. ¹)	

**MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)**

Adopted: January 30, 2008

Released: February 1, 2008

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a Petition for Reconsideration (the "Petition") of the *Report and Order*² in this proceeding filed by Lakeshore Media, LLC ("Lakeshore"), licensee of Station KWCX-FM, Willcox, Arizona; (2) an Opposition filed by REC Networks ("REC"); (3) an Opposition filed by Journal Broadcast Corporation ("Journal"); (4) a Reply to Oppositions to Petition for Reconsideration filed by Lakeshore; and (5) various related pleadings.³ For the reasons discussed below, we deny the Petition.

2. **Background.** At the request of Rural Pima Broadcasting ("Rural Pima"), the *Notice of Proposed Rule Making*⁴ in this proceeding proposed the allotment of Channel 285A at Sells, Arizona, as the community's first local transmission service. In response to the *NPRM*, Lakeshore filed a timely counterproposal, proposing the downgrade of Channel 285C2 to Channel 285C3 at Willcox, the reallocation of Channel 285C3 to Davis-Monthan AFB, and the associated modification of the license for Station KWCX-FM pursuant to the provisions of Section 1.420(i) of the Commission's rules.⁵ To accommodate this allotment, Lakeshore proposed to modify the transmitter site for Station KZZP(FM), Channel 284C, Mesa, Arizona, with the consent of the licensee, and agreed to reimburse the licensee for

¹ The communities of Willcox and Davis-Monthan AFB, Arizona, have been added to the caption.

² *Sells, Arizona*, Report and Order, 19 FCC Rcd 22459 (MB 2004) ("*R&O*").

³ These pleadings include: (1) a Motion for Leave to File Supplement to Opposition and Supplement to Opposition filed by Journal on July 15, 2005; (2) an Opposition to Motion and Reply to Supplement filed by Lakeshore on July 28, 2005; (3) a Motion for Leave to File Second Supplement to Opposition and a Second Supplement to Opposition filed by Journal on November 18, 2005; (4) an Opposition to Motion and Reply to Second Supplement filed by Lakeshore on December 7, 2005; and (5) a Petition for Leave to File Supplement and Supplement to Petition for Reconsideration filed by Lakeshore on June 19, 2007.

⁴ *Sells, Arizona*, Notice of Proposed Rulemaking, 17 FCC Rcd 24575 (MB 2002) ("*NPRM*").

⁵ 47 C.F.R. § 1.420(i). This rule permits the modification of a station's authorization to specify a new community of license on a mutually exclusive co-channel or adjacent channel without affording other interested parties an opportunity to file competing expressions of interest.

the reasonable costs of changing its transmitter site. Further, because the relocation of Station KWCX-FM would create “white area,”⁶ Lakeshore proposed two “backfill” allotments,⁷ Channels 282C2 and 254C2, at Willcox, which would provide service to this area. Finally, Lakeshore proposed the allotment of alternate Channel 249A at Sells in lieu of Channel 285A as requested by Rural Pima, in order to remove the conflict between the two proposals.⁸

3. The *R&O* granted Rural Pima’s rulemaking petition, allotting Channel 285A to Sells,⁹ and denied Lakeshore’s counterproposal, finding that the rationale of *Pacific Broadcasting of Missouri, LLC*,¹⁰ applies equally the facts of this proceeding. In *Refugio*, the Commission discontinued the practice of permitting the “backfill” of new allotments to prevent the removal of a community’s sole local transmission service because a vacant allotment is not an adequate substitute for the removal of a community’s only operating radio station. The *R&O* reasoned that because the “backfill” of a new allotment is no longer permitted in instances involving the removal of a community’s first local transmission service under Priority (3) of the FM Allotment Priorities, it should also not be allowed in a case involving the removal of a first fulltime reception service under higher allotment Priority (1) or a second fulltime reception service under Priority (2), which is co-equal to Priority (3).¹¹ In this case, the *R&O* found that the downgrade and relocation of Station KWCX-FM would create a “white” loss area under Priority (1) because 2,846 persons would be reduced from one full-time aural reception service to none, and a “gray” loss area¹² under Priority (2) because 1,022 persons would be reduced from two full-time aural reception services to one. Lakeshore’s counterproposal was denied because this loss of first and second full-time reception service to over 4,000 persons would not be adequately replaced by “backfill” service provided by two new vacant allotments at Willcox or outweighed by the provision of a first local transmission service under Priority (3) at Davis-Monthan AFB.

4. In the Petition, Lakeshore argues that its counterproposal should not have been denied and sets forth four reasons in support of this position.¹³ First, Lakeshore argues that, although the

⁶ A “white” area is an area in which there are no full-time aural reception services. See *Cheyenne, Wyoming, and Gerring, Nebraska*, Report and Order, 15 FCC Rcd 7528, 7530 n.8 (MMB 2000) (“*Cheyenne*”).

⁷ A “backfill” allotment is one made to replace an allotment that is being modified or relocated in connection with the change of community of license of an authorized station. See, e.g., *Cheboygan, et al., Michigan*, Request for Supplemental Information, 17 FCC Rcd 20491 (MB 2002).

⁸ Lakeshore’s counterproposal is mutually exclusive with Rural Pima’s rulemaking petition because Channel 285C3 at Davis-Monthan AFB is short-spaced to Channel 285A at Sells under the Commission’s minimum distance separation requirements. See 47 C.F.R. § 73.207.

⁹ We clarify that the reference coordinates for Channel 285A at Sells, Arizona, concurred to by the government of Mexico are 31-51-28 NL and 111-53-23 WL as a specially negotiated restricted allotment limited to 1.1 kW ERP and 100 meters HAAT or the equivalent along the 123.2 degree azimuth toward Station XHNI(FM), Channel 286B, Nogales, Sonora, Mexico.

¹⁰ *Letter to Pacific Broadcasting of Missouri LLC*, Ref. No. 1800B3-LAS (MMB, Dec. 21, 2001), *app for rev. denied*, Memorandum Opinion and Order, 18 FCC Rcd 2291 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 10950 (2004) (“*Refugio*”).

¹¹ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982).

¹² A “gray” area is an area in which there is only one full-time aural reception service. See *Cheyenne*, 15 FCC Rcd at 7530.

¹³ *Public Notice* of the Petition was given in Report No. 2694, February 28, 2005.

Commission has a strong policy against the creation of “white” area, the counterproposal does not create “white” area, as a matter of law, because the Commission considers a vacant allotment to prevent the creation of “white” area.¹⁴ Lakeshore states that the Commission has taken this approach because it assumes that service will be provided on existing vacant allotments and that under *Greenup*, it does not matter when this service is actually provided. Second, Lakeshore argues that the loss of existing service by the relocation of Station KWCX-FM should have been considered under Priority (4) instead of Priorities (1) and (2) because the Commission has held that disruption in or loss of existing service where unserved areas are covered by potential service falls under Priority (4).¹⁵ When the loss of service in this case is considered under Priority (4), Lakeshore asserts that it cannot overcome the provision of a first local service to Davis-Monthan AFB under higher allotment Priority (3).¹⁶ Third, Lakeshore contends that the *R&O* should not have reversed the Commission’s precedent of allowing the use of vacant allotments to prevent the creation of “white” or “gray” area on an *ad hoc* basis because (1) the Bureau gave no notice that it intended to address this particular policy and (2) the new policy was retroactively applied to the parties in this proceeding without an affirmative finding on the record that the retroactive application of such a policy is appropriate.¹⁷ Fourth, Lakeshore alleges that changed circumstances have occurred that eliminate all of the “white” area and most of the “gray” area and, therefore, warrant grant of the counterproposal.¹⁸

5. In its Opposition, Journal contends that the Petition should be denied because the staff correctly concluded that the new allotments proposed by Lakeshore cannot be used as “backfill” for the “white” and “gray” that would be created by Lakeshore’s counterproposal based upon the Commission’s decision in *Refugio*. Additionally, Journal claims that Lakeshore’s reliance on two pending applications that would provide service to the “white” area is misplaced inasmuch as the applications have not been granted. Finally, both Journal and REC assert that Davis-Monthan AFB is not a community for allotment purposes and is located entirely within the city limits of Tucson, Arizona.

6. In a Reply to Oppositions, Lakeshore disagrees with Journal that the *R&O* properly relied upon *Refugio*. On the contrary, Lakeshore argues that *Refugio* does not literally apply to this proceeding because this case involves the loss of reception service, not the loss of transmission service. In addition, Lakeshore contends that its reliance on two pending applications is not misplaced because one of them

¹⁴ See *Greenup, Kentucky, and Athens, Ohio*, Memorandum Opinion and Order, 6 FCC Rcd 1493 (1991) (“*Greenup*”).

¹⁵ See *Nogales, Vail, and Patagonia, Arizona*, Report and Order, 16 FCC Rcd 20515, 20519 (MMB 2001) (“*Nogales*”).

¹⁶ Alternatively, Lakeshore requests that, if the potential service from proposed “backfill” allotments will no longer be considered in gain and loss calculations, the staff should clarify whether other types of potential service will be considered in gain and loss calculations (e.g., existing vacant allotments, unbuilt construction permits, and the assumption of maximum, as opposed to actual, facilities for all FM stations, except for Class C. Lakeshore also questions why concurrently proposed “backfill” allotments are not considered but other types of potential service apparently are taken into account. See Lakeshore Petition at 6-8.

¹⁷ See *Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737 (D.C. Cir. 1986).

¹⁸ Lakeshore refers to the filing of an application (File No. BPH-20010525AAX) by Station KCDQ(FM), Tombstone, Arizona, which was amended on January 28, 2004. Lakeshore contends that, when this application is granted, it will cover most of the “white” area; Lakeshore contends that the small area left unserved contains 40 people and should be considered *de minimis*. Likewise, Cochise Broadcasting LLC, the high bidder in FM Auction 37, filed an application (File BNPH-20041201CAN) for a new FM station on Channel 279C at Lordsburg, New Mexico, which would cover all of the “white” area and most of the “gray” area.

has been granted.¹⁹ Last, Lakeshore states that it previously submitted extensive evidence on the community status of Davis-Monthan AFB and believes that the evidence supports a determination that it is both a community and independent of Tucson.²⁰

7. **Discussion.** As a threshold matter, we will grant the motions filed by Journal and Lakeshore to supplement their pleadings.²¹ Consideration of these pleadings will enable us to resolve this proceeding on a full record and to take into account changed circumstances that have occurred since release of the *R&O*.²² However, as explained below, we do not find that the arguments raised in the Petition or the changed circumstances warrant any modifications to the *R&O*.

8. Foremost, we continue to believe that the *R&O* properly applied the Commission's rationale in *Refugio* to the facts of this case and denied Lakeshore's counterproposal because the proposed "backfill" allotments at Willcox are not adequate substitutes for the creation of sizeable "white" and "gray" service loss areas. Indeed, it is undisputed that the relocation of Station KWCX-FM would result in the loss of all radio service for 2,846 persons and the reduction from two to one full-time reception service for 1,022 persons. Because the Commission no longer permits the "backfill" of a new allotment where there would be the removal of a community's sole local transmission service under Priority (3), it is likewise in the public interest to apply this policy to situations involving loss of first and second full-time reception services under Priorities (1) and (2). In all three instances, "... the licensing of vacant allotments is too remote and too contingent to justify the filing of move-out proposals premised on such replacement services."²³

9. Next, to the extent that Lakeshore argues that, as a matter of law, its counterproposal does not create "white" or "gray" loss areas because the Commission considers a vacant allotment to prevent the creation of "white" or "gray" areas, we disagree. Although the *R&O* distinguished the issues involved in *Greenup* and the instant proceeding,²⁴ we recognize that *Greenup* did establish a single test for

¹⁹ See File No. BPH-20010525AAX, granted on March 22, 2005. See *supra* note 18.

²⁰ On July 15, 2005, Journal supplemented its Opposition, stating that the application (File No. BNPH-20041201CAN) filed by the successful bidder in FM Auction #37 for a new station on Channel 279C at Lordsburg, New Mexico, was modified by a second application to downgrade the channel to Class C1 and to change the transmitter site. See File No. BNPH-20050607ABD. As a result, Journal contends that the Lordsburg station would not provide 60 dBu service to any of the "white" area. On July 28, 2005, Lakeshore responded that the modified Lordsburg application is of no decisional significance because under *Greenup*, FM stations other than class C stations are analyzed as if they were constructed with maximum facilities for their class, and not based upon the actual facilities proposed. On November 18, 2005, Journal reported the grant of the Lordsburg application (File No. BNPH-20050607ABD). On June 19, 2007, Lakeshore submitted an engineering supplement to the Petition, reporting that if all currently licensed facilities and construction permits are considered, there would no longer be "white" area loss but would be a "gray" area loss of 2,070 people.

²¹ See note 3 *supra*.

²² See, e.g., *Greenup*, 6 FCC Rcd at 1494 (reversing the grant of a proposal that originally claimed benefits under Priority 2 because intervening allotment actions had removed the Priority 2 gains); and *Columbus and Monona, Wisconsin*, Memorandum Opinion and Order, 21 FCC Rcd 10012 (MB 2006) (granting a motion to supplement a petition for reconsideration to provide information on facts that have changed since the release of the *Report and Order* in an FM allotment proceeding).

²³ *Refugio*, Memorandum Opinion and Order, 19 FCC Rcd at 10956.

²⁴ See *R&O*, 19 FCC Rcd at 22461-62, ¶ 9. The *R&O* distinguished *Greenup* on the ground that it permits taking into account vacant allotments in determining whether an allotment proposal should receive Priority (1) or (2) credit, such as between the mutually exclusive upgrade proposals in that case. By way of contrast, the *R&O* explained (continued....)

calculating “white” or “gray” gain or loss areas under Priorities (1) and (2) that has been used in FM allotment proceedings. Under this test, if a proposed reallocation of an FM station would create gain or loss areas, we would consider whether the existing or proposed 60 dBu service contours of the reallocated station are covered by actual service (e.g., operating AM or FM stations) or potential service (e.g., unbuilt construction permits or vacant allotments)²⁵ before determining whether there would be a gain or loss of first or second full-time reception service. However, the extension of the Commission’s *Refugio* policy to the facts of the instant proceeding has necessarily modified, to some extent, the calculation of “white” or “gray” areas for operating, as opposed to unbuilt, stations. Under the former approach, the potential service from a concurrently proposed “backfill” allotment or an existing vacant allotment would negate the creation of “white” or “gray” areas.²⁶ But, in the wake of the *Refugio* case, we will no longer consider the potential service from a “backfill” allotment as an adequate substitute for the removal of first or second full-time reception service by an operating station and will deny a proposal relying on a “backfill” allotment on Priority (1) and (2) grounds.²⁷ By way of contrast, the traditional *Greenup* test of considering the potential service from “backfill” or existing vacant allotments would continue to apply in cases involving reallocations and changes of community of license for unbuilt stations because existing

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that Lakeshore’s counterproposal involves whether a vacant allotment is sufficient to offset the removal of actual first or second reception service.

²⁵ The *Greenup* test also assumes maximum, as opposed to actual, facilities for all FM stations and allotments, except for Class C, regardless of whether these maximum facilities are ever realized. See *Greenup*, Memorandum Opinion and Order, 6 FCC Rcd at 1495, ¶ 15.

²⁶ See, e.g., *Nogales*, *supra* note 15 (taking into account, *inter alia*, the potential service from vacant allotments in determining that loss of service from the proposed reallocation of an FM station should be considered under Priority 4 as opposed to Priority 2); *Meeker and Craig, Colorado*, Report and Order, 15 FCC Rcd 23858 (MMB 2000) (including the potential service from 5 vacant FM allotments in determining the absence of “white” or “gray” loss areas and the creation of a “gray” gain area of 802 people but denying the proposed reallocation of an unbuilt construction permit on other grounds) (“*Meeker*”); *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, Report and Order, 6 FCC Rcd 6580, 6584 n.30 (MMB 1991) (looking favorably upon two proposed “backfill” allotments to replace the loss of first and second aural reception service but denying the proposed reallocation on other grounds) (“*Anniston*”); and *Caliente, Nevada, et al.*, Report and Order, 20 FCC Rcd 893, 896 (MB 2004) (recognizing that two “backfill” allotments were concurrently proposed to prevent the creation of a “gray” loss area but finding it unnecessary to allot the “backfill” channels because the “gray” area was unpopulated) (“*Caliente*”). We further note that the *R&O* distinguished both *Meeker* and *Nogales* from the present proceeding on the ground that neither case granted a vacant allotment to fill “white” or “gray” areas. See *R&O*, 19 FCC Rcd at 22461 n.8. Specifically, in *Meeker*, the proposal was denied for other reasons, and in *Nogales*, consideration of the station as a grandfathered 3kW, as opposed to a 6 kW, Class A FM station, virtually eliminated the “gray” loss area at issue in that case. However, we acknowledge and clarify that, while no “backfill” allotments were made to eliminate “white” or “gray” areas, these cases did follow the *Greenup* test and took into account potential service from vacant allotments in calculating gains or losses of service. Because these cases were decided before the Commission’s decision in *Refugio*, they contain no language indicating that potential service from vacant allotments could not have been relied upon.

²⁷ Indeed, the *Refugio* rationale was recently extended so that the potential service from a vacant allotment will not be considered where an operating station is changing its community of license. See *Eldorado, Mason, Mertzson, and Fort Stockton, Texas*, Report and Order, 21 FCC Rcd 3572 (MB 2006), *recon denied*, Memorandum Opinion and Order, 22 FCC Rcd 280 (MB 2007), *app. for rev. pending* (denying reallocation of an on-air FM station because it would create a “gray” area containing 7,372 persons and not taking into account potential service from vacant allotments in the loss area) (“*Eldorado Proceeding*”).

on-air service is not being lost.²⁸ Likewise, we would apply the traditional *Greenup* test to rulemaking proposals seeking new allotments and claiming the applicability of Priorities (1), (2), or (3) because new service is being proposed and no actual service is being subtracted. Accordingly, Lakeshore's argument that, "as a matter of law," there are no "white" or "gray" areas in this proceeding has no merit.²⁹

10. Although the Petition points out that two construction permits³⁰ have been granted to stations in Tombstone, Arizona, and Lordsburg, New Mexico, since the release of the *R&O*, we do not believe that these changed circumstances, as well as more recent ones,³¹ warrant reversing the result of this proceeding because these newly authorized facilities have not been built and are not currently providing service to the "white" and "gray" loss areas that would be created by the reallocation of Lakeshore's station. As a result, these unbuilt construction permits are not adequate replacements for the loss of first and second full-time reception service to approximately four thousand people that would occur in this case. This approach is similar to *Refugio* in which the move-out was conditioned on the initiation of broadcast operations by the replacement station.³²

11. Contrary to Lakeshore's assertion, extending *Refugio* on an *ad hoc* basis to this proceeding and not notifying the parties in advance that the Commission may rule on this issue does not violate basic administrative procedure. This policy change occurred within a rulemaking proceeding conducted pursuant to Section 553 of the Administrative Procedure Act ("APA")³³ under which Lakeshore had actual notice and opportunity to address this issue. Indeed, the applicability of the *Refugio* policy was specifically raised by Journal and was responded to by Lakeshore, giving the staff the benefit of a record on this issue before applying that policy. Further, it is well established that the Commission has broad authority to change its processing rules or policies at any time and parties do not have a vested

²⁸ See, e.g., *Meatiest et al., Wyoming*, Report and Order, DA 08-126 at ¶ 7 and n.40 (reallocating an unbuilt FM station from Marbleton, Wyoming, to Ballard, Utah, and relying upon a vacant "backfill" FM allotment at Marbleton to prevent the creation of a "white" loss area of 759 persons caused by the reallocation).

²⁹ To the extent that Lakeshore argues that, under *Nogales*, disruption in or loss of "on-air" service where unserved areas are covered by potential service falls under Priority (4), this case was decided before the Commission's *Refugio* decision and, like the *dicta* in *Anniston*, is no longer controlling in light of that decision. By way of contrast, *Meeker* is still valid because it did not involve the loss of "on-air" service.

³⁰ See File Nos. BPH-20010525AAX for Station KCDQ(FM), Tombstone, Arizona, and BPNPH-20050607ABD for a new FM station on Channel 279C1, Lordsburg, New Mexico.

³¹ Subsequent to the filing of Lakeshore's Supplement to Petition for Reconsideration, the unbuilt construction permit (File No. BPNPH-20050607ABD) for Channel 279C1, Lordsburg, New Mexico, which was relied upon as a replacement service for the "white" or "gray" loss area was downgraded, reallocated, and modified to specify operation on Channel 279A at Vail, Arizona. See *Corona de Tucson, et al., New Mexico*, Report and Order, 22 FCC Rcd 13933 (MB 2007), *recon. pending*. We also note that a construction permit application (File No. BPH-20051228AEC) was granted on July 26, 2007, to upgrade Station KPSA-FM, Channel 249A, Lordsburg, New Mexico, to Channel 250C, but this upgraded facility is not built.

³² See *Refugio*, Memorandum Opinion and Order, 19 FCC Rcd at 10956, ¶ 14. We will, however, continue to assume maximum facilities for all FM stations, except for Class C, in calculating the gain or loss areas created by the proposed reallocation of FM stations and in determining the coverage of other FM stations in the gain or loss areas. First, assuming maximum facilities enables us to take into account the areas or populations that FM stations are protected from interference and entitled to service. Second, the consistent use of maximum facilities promotes uniformity in gain or loss calculations. Third, the FM Table of Allotments and the minimum distance separation requirements of Section 73.207 are based upon the maximum permissible facilities for all classes of FM stations.

³³ 5 U.S.C. § 553.

right that a particular rule or policy will continue to be applied.³⁴ The policy of permitting the “backfill” of new allotments was discontinued in *Refugio* and in the present proceeding because it was determined that it was contrary to the public interest to replace the actual loss of sole local transmission service or first or second fulltime reception service with the potential service of vacant “backfill” allotments.³⁵ Applying this change of policy in this proceeding does not constitute an unlawful retroactive application of policy because the Commission is not required to follow a policy or procedure that has been determined not to be in the public interest.³⁶

12. **Conclusion and Ordering Clauses.** For the reasons stated above, and pursuant to the Communications Act of 1934, as amended, and our rules,³⁷ Lakeshore’s Petition for Reconsideration IS DENIED.

13. IT IS FURTHER ORDERED, That a copy of this *Memorandum Opinion and Order* be sent by Certified Mail, Return Receipt Requested, to Scott Cinnamon, Esq., Law Offices of Scott Cinnamon, PLLC, 1250 Connecticut Avenue, N.W., Suite 200, #144, Washington, D.C. 20036 (Counsel for Rural Pima Broadcasting); Mark N. Lipp, Esq., Wiley Rein LLP, 1776 K Street, N.W., Washington, D.C. 20006 (Counsel for Lakeshore Media, LLC); Aaron P. Shainis, Esq., Shainis & Peltzman, Chartered, 1850 M Street, N.W., Suite 240, Washington, D.C. 20036 (Counsel for Lakeshore Media, LLC); Gregory Masters, Esq., Wiley Rein LLP, 1776 K Street, N.W., Washington, D.C. 20006 (Counsel for Citicasters Licenses, L.P.); Mr. Andy Laird, Journal Broadcast Group, Inc., 720 E. Capitol Drive, Milwaukee, Wisconsin 53212; Joseph M. DiScipio, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, 11th Floor, Arlington, Virginia 22209 (Counsel for Journal Broadcast Group, Inc.); Lawrence N. Cohn, Esq., Cohn and Marks LLP, 1920 N Street, N.W., Suite 300, Washington, D.C. 20036-1622 (Counsel for Journal Broadcast Group, Inc.); and Mr. Rich Eyre, REC Networks, P.O. Box 40816, Mesa, Arizona 85274.

14. IT IS FURTHER ORDERED, That this proceeding is terminated.

15. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

³⁴ See, e.g., *Chadmoore Comm., Inc. v. FCC*, 113 F.3d 235, 240-41 (D.C. Cir 1997) (filing of upgrade applications did not vest petitioners with a legally cognizable expectation that criteria for considering their applications would remain unchanged); *Letter to Pamela C. Cooper, Esq., et al.*, 16 FCC Rcd 12668, 12672 (MMB 2001) (changes in processing rules may be applied in cases arising before their promulgation); and *Eldorado*, Memorandum Opinion and Order, 22 FCC Rcd at 282, ¶ 7 (applying the *Refugio* policy to the parties in this case does not constitute an unlawful retroactive rulemaking because a filer does not have a vested right in the continued application of processing policies in effect at the time of filing).

³⁵ See *Refugio*, Memorandum Opinion and Order, 19 FCC Rcd at 2295-96; and *R&O*, 19 FCC Rcd at 22461.

³⁶ See, e.g., *Washington Association for Television and Children v. FCC*, 655 F. 2d 1264, 1268 (D.C. Cir. 1981). In view of the denial of Lakeshore’s Petition, it is not necessary to address the issue of the community status of Davis-Monthan AFB raised by both Journal and REC.

³⁷ See 47 U.S.C. § 405; 47 C.F.R. § 1.429.